Supreme Court, U.S.
FILED

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Docket No.

In the Supreme Court of the United States

William C. Gilmore and Cheryl A. Gilmore
Petitioners

v.

United States of America
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

William C. Gilmore
PRO SE
44 Bradford Corner Road
West Woodstock, CT 06282
(860) 974-1999

September 13, 2002

42 pp.

QUESTIONS PRESENTED

I Whether the Court of Appeals properly determined that evidence presented post-trial in the district court does not violate the due process clause of the Fifth Amendment right to due process.

II Whether the Court of Appeals properly determined that the district court's denial of a continuance did not violate the due process clause of the Fifth Amendment.

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William C. Gilmore, PRO SE, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (*App.*, infra, 18-28) is not reported. The judgement of the District Court is reported at 62 F. Supp.2d 578.

JURISDICTION

The Court of Appeals entered judgement on March 19, 2001 (*App.*, infra, A1-A5). The Court of Appeals denied a petition for rehearing on May 14, 2002 (*App.*, B1). The jurisdiction of this Court is proper under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fifth Amendment provides in pertinent part that "[n]o person shall be *** deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

The Government (plaintiff) commenced a foreclosure action against the Gilmores (defendants) on two loans made by the Farm Service Agency ("FSA") formerly called the Farmer's Home Administration) for an arrearage of $2,125. The district court granted summary judgement of foreclosure by sale.

The Gilmores appealed and in February 1999, the Appeals Court remanded the case for trial on the ground that there was "a genuine issue of material fact as to whether the Gilmores defaulted on the FSA loans." *United States v. Gilmore, No. 97-6218, 1999 WL 55255*, at **2 (2d Cir. Feb. 3, 1999).

In the three month interim before trial, the Gilmores again requested documentation from the Government regarding charges and payments made to their loans to enable them to prepare their defense. The Government did not comply with their request until four days prior to trial. The

Gilmores immediately filed for a continuance which was denied.

The two day bench trial then commenced on June 9, 1999. The district court reserved its decision pending a supplemental submission of a hypothetical payment schedule from the Government. The district court received this submission along with a two page statement on July 12, 1999. Contrary to the Fifth Amendment right to due process, the Gilmores were not afforded the opportunity to examine the evidence or cross examine the preparer of this evidence.

The district court found, based on this post-trial submission, that the Gilmores owed nearly $18,000 less than the Government's claim. Despite the government's poor record keeping and mishandling of the Gilmore's account, the district court still ruled that the Gilmores were in default of their loans and granted the foreclosure.

The Gilmores appealed this decision to the U.S. Court of Appeals, Second Circuit. In affirming the lower court's decision, they addressed the Gilmore's due process rights,

stating in part, *"the Gilmores in fact benefited from that evidence."* (*App.* A4). The Gilmore's filing for a rehearing with the 2nd Court of Appeals was denied.

REASONS FOR GRANTING THE PETITION

I Whether the Court of Appeals properly determined that evidence presented post-trial in the district court does not violate the due process clause of the Fifth Amendment right to due process.

1. Evidence submitted post-trial results in denying the opposing party an opportunity to cross examine. The Due Process Clause of the Federal Constitution is clear in stipulating that every opportunity be afforded to preserve the fundamental fairness in the hearing of a cases.
2. The Gilmores were denied their right to examine the evidence prepared by Carrie Novak, the preparer of

the evidence. This latest compilation by Ms. Novak is automatically suspect as she had previously submitted erroneously compiled spreadsheets as admitted at trial.

> "documentary evidence, and even more importantly, testimony must be disclosed to the individual so that he or she has an opportunity to show that it is untrue." *–16B AmJur 2d §960, Green v. McElroy, 360 U.S. 474, 79 S Ct. 1400, 3 L. Ed. 2d 1377 (1959)*

3. Because the Gilmores did not have the opportunity to cross examine the witness, they were unable to establish how the witness arrived at these figures. In addition, her two page commentary does not take into account that the large lump sum payment made in 1989 was a settlement amount and brought the account current in all respects. Her statement that "*While the large payment brought Mr. Gilmore up to*

date on his promissory note and stopped the foreclosure, it did not bring his amortized schedule status where it would have been had he never missed or been late on a payment". is false. The Gilmores contend that they did bring their account current with this large payment and disputes this statement. However, because this was submitted as a post-trial exhibit, the Gilmores were unable to confront the witness regarding this statement.

4. The appeals court dismissed the Gilmore's due process argument because they *"benefitted from that evidence ... Moreover, they have not explained why the calculation is incorrect or what the correct result would have been."*. Although the court did reduce the Government's claim, the Gilmores cannot agree or disagree with his findings without asking questions of the witness. To offer the correct result would be presumptuous of the Gilmores without questioning

the witness. It is not just the spreadsheet in question but also the two page letter which accompanied the spreadsheet. The Gilmores contend that they were not in default on the loans and the court's reduction of the debt tends to support this assertion.

5. The right to cross examine is so important to the due process clause of the constitution, it is upheld even outside a court environment as The Illinois Appellate Court determined in the case of *Colquitt v. Rich Township High School District, 1998 WL 476734 (Ill. App. 1st Dist. 1998).*

> Fundamental concepts of a fair hearing include "the opportunity to be heard, the right to cross-examine adverse witnesses and to impartiality in rulings upon evidence." *Mahonie v. Edgar, 131 Ill. App. 3d 175, 179, 476 N.E.2d 474, 87 Ill. Dec. 13 (1985).*

In *Lonzollo v. Weinberger* , 34 F.20d 712 (7th Cir. 1976), the Seventh Circuit also held that the administrative law judge's reliance on a post-hearing report without giving the claimant an opportunity to rebut the report or cross-examine the reporting physician violated due process. *Id.* at 7156.

6. This case has revolved on a question of fact as to the amount of monies the Gilmores owe the government on their mortgage and whether they were in fact in default on the loan. FSA's post-trial exhibit indicates a supposition that the Gilmore's were denied the right to refute. Particularly in light of the fact that prior exhibits submitted and prepared by this same witness were inaccurate, the Gilmores should have been allowed to examine the hypothetical exhibit. In the case of *State ex rel. Jones v. Baggett, 1999 OK 68;990 P.2d 235;1999 Okla. LEXIS 81;70 O.B.A.J. 2226*, the Superior Court of Oklahoma noted:

> The right of a litigant to *in-court* presentation of evidence is essential to due process. Where important decisions turn on questions of fact, due process requires an opportunity, in almost every situation, to confront and cross-examine adverse witnesses. (Footnotes omitted)
>
> *Malone v. Malone*, 1979 OK 21, 591 P.2d 296, 297-298; *See also Harmon v. Harmon*, 1997 OK 91, 943 P.2d 599, 604 (where judicial ruling turns on questions of fact and evidence is used to prove certain facts, the evidence must normally be disclosed to a party litigant so that he/she has an opportunity to test the evidence and show it is untrue).

7. The Fifth Amendment protects an individual's guarantee of due process of law whenever the United

States is taking an individual's life, liberty or property. The Gilmores have resided on their farm for over 30 years and should be afforded the opportunity to present every available defense.

> "...The right of the litigants to in-court presentation of evidence is essential to due process. Additionally, where evidence is not presented in court, due process requires that the parties be apprised of all the evidence and considerations brought before the trial judge before the court arrives at a judgement, so that they may have an opportunity to show that it is untrue. A ruling based on evidence which a party has not been allowed to confront or rebut is one which denies due process. [footnotes omitted]..*16D C.J.S. §1168*

On the other hand, the minimal standards of due process are not met if the trier of facts

considers the contents of an investigative report *(La.—Curro Underwriters, Inc. v. Guastella Const. Co., 195 So.2d 300, Okl.—Malone v. Malone, 591 P.2d 296)* or for that matter any other evidence *(Mo.—Tullock v. City of St. Charles, App., 602 S.W.2d 860)* without in some way making the contents known to the litigants, and, in the case of a report, giving the litigants the opportunity to cross-examine the person who prepared it. *(D.C.—Scott v. Scott, App., 415 A.2d 812) 16D C.J.S. §1168*

II Whether the Court of Appeals properly determined that the district court's denial of a continuance did not violate the due process clause of the Fifth Amendment.

1. The Gilmores filed a Motion for Continuance of the trial due to the Appellee's failure to provide disclosure in time for examination and trial preparation. The Court abused his discretion in denying this request. The Gilmores used due diligence in trying to obtain a simple accounting of how payments were applied to their loans as follows:

a. Requested documentation of the meeting held with FSA discussing the lump sum payment made in 1989. The court ordered the government to supply this record or an affidavit if the record was not located. The government did not supply either.

b. Contacted FSA directly requesting an accounting of the application of payments to our loans since 1989. Received a reply from U.S. Attorney Sciarrino threatening to request the Court to sanction us for unauthorized contact.

c. Requested via certified mail to US Attorney Sciarrino, an accounting of application of payments to our loans. No answer was received.

d. Hired an attorney to assist in getting this information. Although Atty. Sciarrino told him she was sending it, she failed to do so.

The documents requested were part of our record with FSA and should have been made readily available to the borrower.

Under Statute, a party may obtain discovery and inspection of any document referred to in the adverse party's pleadings or affidavits without a court order by giving him notice in writing to produce such document for inspection. – *Dache v. Abraham & Straus, 187 Misc. 1001, 66 N.Y.S. 2d 787 (Sup. Ct. 1946)*

2. The Gilmores last resort was to request the court to compel disclosure. This was denied by the court but

U.S. Attorney Sciarrino did send her prepared 120 exhibits four days prior to trial with the comment that the requested disclosure should be in there.

3. Upon receiving this mountain of paperwork, it became apparent that the Gilmores would need the help of an accountant to sort through and compile a meaningful accounting of how payments were applied to the loans as well as deciphering what advances and charges were made to their account. Necessary preparation that was vital to their defense.

4. The Gilmores immediately filed for a continuance to examine this material but the trial commenced as scheduled on June 8, 1999. Both the Appellate Court's and District Court's assumption that most of the material 'was not new' was entirely false.

The court's failure to grant a continuance was an abuse of discretion and violated due process.

The case of *Fabric v. Provident Life & Acc. Ins. Co., 115 F.3d 908 (11th Cir. 1997)* ruled that the district

court's failure to rule on pending discovery motions or to grant a continuance was an abuse of discretion where insurance company had not had an adequate opportunity for discovery and had not been able to obtain responses to its discovery requests.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

William C. Gilmore
PRO SE
44 Bradford Corner Road
West Woodstock, CT 06282
Tel: 860-974-1999

APPENDIX

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, (File Stamp[1])

Plaintiff, Civil No. 3:95CV002125 (GLG)MBS

vs.

WILLIAM C. GILMORE,

Defendant.

JUDGMENT OF FORECLOSURE BY SALE

AND ORDER OF SALE

The complaint in this action seeks foreclosure of a mortgage on property situated in the Town of Woodstock, Connecticut, and is more particularly bounded and described in Schedule A, attached hereto. The foreclosure complaint was filed by the Government on October 3, 1995.

[1] File Stamp: FILED JUN 19 2 26 PM '02, U.S. DISTRICT COURT, CONN.

Pursuant to this Court's Findings of Facts and Conclusions of Law, entered on July 20, 1999, and Exhibit A, attached hereto, the following sums are due the Government:

Judgment entered July 20, 1999 ..... $ 48,736.04

Interest accrued from July 21, 1999

to May 17, 2002 at $7.0047 per diem... $ 7,228.85

TOTAL DUE PLAINTIFF $ 55,964.89

In addition, the Court further finds that the fair market value of the property, as appraised on December 12, 1996 is $104,000.00

WHEREUPON, it is adjudged that the mortgage lien of the United States is foreclosed against the property described in Schedule A attached hereto and it is ORDERED that the property be sold by the United States Marshal.

Accordingly, the United States Marshal for the District of Connecticut is COMMANDED to seize and sell

the property described in the attached Schedule A at public auction, subject to the approval of the Court, in accordance with Title 28, United States Code, Section 2001 and 2002. Notice shall be published once a week for four consecutive weeks prior to the sale in the Hartford Courant.

Said notice shall describe the property referenced in Schedule A and shall contain the terms and conditions of sale as set out herein.

The terms and conditions of the sale shall be as follows:

A. The property described in Schedule A shall be sold as a whole at public auction on the premises on Saturday, July 27, 2002, at 11:00 a.m. The property shall be sold free and clear of the mortgages herein being foreclosed and of all claims subsequent in right thereto the holders of which are bound by this action; but subject to any sums which may be due for municipal property, water, sewer, or fire taxes, use charges or assessments: any fire, water, sewer or utility

district taxes: unless, at or before that time, the sum above found to be due upon the mortgage debt, plus interest from the date of this judgement, ~~and the costs and attorney's fees listed above~~[2] and any expenses for advertising as may have been incurred at the date of such payment, all as taxed by the clerk, be paid to the plaintiff, in which case the sale shall not take place.

B. The sale shall be subject to building lines if established, all laws, ordinances and governmental regulations (including building and zoning ordinances), affecting said premises,and easements and restrictions appearing of record, if any.

C. The United States may bid a credit against its judgment and interest thereon, costs and expenses, without tender of cash, as provided by Title 3 1, United States Code, Section 195.

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[2] This portion crossed out and initialed GLG

. D. The terms of sale as to all other persons or parties bidding shall be as follows: The successful bidder (hereinafter "purchaser") shall be required to deposit with the United States Marshal $ 10,400.00 in cash or certified check or cashier's check payable to the Clerk, United States District Court, District of Connecticut, immediately upon the property being struck off and awarded to him as the highest and best bidder.

The remainder of the purchase price shall be paid at the office of the United States Marshal on or before 5:00 p.m., thirty days inclusive, from the approval of said sale by the Court, or upon the passing of the deed, whichever may occur first. Payment of the balance due on the purchase price shall be by cash, certified check or cashievs check payable to the Clerk, United States District Court.

Should the purchaser fail to comply with the terms of the sale, he/she shall be liable to the plaintiff for $ 10,400.00 as a penalty, besides costs, to be recovered on motion, five

(5) days notice of such motion being given to the purchaser. The deposit by the purchaser shall be paid over and delivered to plaintiff to be applied toward payment of the said penalty. Payment of said penalty by the purchaser shall not be a credit on the judgment of plaintiff against the first-named defendant. Should the property on second sale bring less than on the former sale, the defaulting purchaser at the first sale shall be liable to pay the first-named defendant at judicial sale all loss which the first-named defendant sustains, including the amount of the difference between the bid at the first sale and bid under which the property finally sold, to be recovered on motion.

The United States Marshal shall make his report of sale within ten (10) days from the date of sale. On a motion filed by the plaintiff, the purchaser, or any party in interest in this case, or on its own motion, the Court then will determine whether to confirm the sale. If the sale is confirmed, the

United States Marshal shall deliver his deed to the purchaser upon receipt of the balance of the purchase price.

The United States Marshal shall place both the deposit received at the time of sale and the balance of the purchase price in the registry of the Clerk of this Court upon receipt of said sums. The Clerk shall retain the purchase price in an interest-bearing account until disbursement is ordered by this Court.

The United States Marshal is directed to make a due return of this Judgment and Order, certifying the manner in which he has executed its commands.

SO ORDERED at Waterbury, Connecticut, on this 18th day of June, 2002.

"s/Gerard L. Goettel"

GERARD L. GOETTEL

UNITED STATES DISTRICT JUDGE

CTDC/NHCT

95-cv-2125

Goettel

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT TN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States

Courthouse, Foley Square, in the City of New York, on the 19th day Of March , two thousand and two.

PRESENT:

Hon. John M. Walker, Jr.,

Chief Judge, (File Stamp[3])

Hon. Chester J. Straub,

Hon. Robert A. Katzmann,

Circuit Judges.

UNITED STATES OF AMERICA,

Plaintiff-Appellee-Cross-Appellant,

v.

Nos. 99-6233 & 99-6293

WILLIAM C. GILMORE AND CHERYL A. GILMORE,

Defendants-Appellants-Cross-Appellees.

APPEARING FOR APPELLANTS:

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[3] File Stamp : United States Court of Appeals, Second Circuit, Filed March 19, 2002, Roseann B. Mackechnie, Clerk

WILLIAM C. GILMORE, PRO SE,

WEST WOODSTOCK, CT

APPEARING FOR APPELLEE:

CHRISTINE L. SCIARINNO, Assistant United States Attorney (Stephen C. Robinson, United States Attorney, District of Connecticut, on the brief), New Haven, CT

Appeal from the United States District Court for the District of Connecticut (Gerard L. Goettel, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is **AFFIRMED**.

The Government commenced a foreclosure action against the Gilmores for defaulting on two loans made in 1973 by the Farm Service Agency ("FSA") (formerly called the Farmer's Home Administration) of the Department of

Agriculture which were both secured by one mortgage on the Gilmores' residence and land. One loan was for $20,000 at five percent annual interest and the second for $5,000 at seven and one quarter percent annual interest. The Government alleged that the Gilmores failed to make payments of principal and interest when due. The Government moved for summary judgment of foreclosure by sale, claiming not only principal and interest amounts, but "advance" charges as well. In opposition, the Gilmores explained that, in 1989, they had paid FSA a $42,123.82 lump sum payment to settle a previous foreclosure action and to cure a default concerning the same loans at issue in the present action. The Gilmores argued that the FSA was never able to provide them with information on how it allocated the lump sum payment, nor had the FSA provided them with itemized statements of their account since their 1989 payment. The Gilmores also complained that the FSA never explained the advance charges to them.

After a hearing, the district court granted summary judgment of foreclosure by sale unless the Gilmores paid $34,920 within thirty days of the entry of the order. Instead of paying the amount, the Gilmores appealed. In February 1999, this Court reversed the district court and remanded the case for trial on the ground that there was "a genuine issue of material fact as to whether the Gilmores defaulted on the FSA loans." See United States v. Gilmore, No. 97-6218, 1999 WL 55255, at **2 (2d Cir. Feb. 3, 1999).

After a two-day bench trial, the district court found that "the 1989 settlement of the previous foreclosure action eliminated any past deficiency," and thus, the Gilmores' owed the Government $48,736.04 on the two loans instead of the Government's figure of $66,210. See United States V. Gilmore, 62 F. Supp. 2d 576, 578-79 (D. Conn. 1999). The court, however, also found that the Gilmores were "in default on the two loans. . and that the government [was] entitled to foreclose on [their] property," because the Gilmores' reason

for terminating the mortgage payments after the 1989 settlement, that they "questioned how-the 1989 settlement payment had been applied [to their account,]" was insufficient. id.. at 579.

Next, turning to the factual issues on remand, the district court found that there was no need to address the issue of how the 1989 lump sum settlement payment was allocated, since the court found in favor of the Gilmores on that issue. Id. On the issue of inconsistency between the records and the statements, the court found that "[the Government's) 142 exhibits detailing the various charges and amounts assessed . . . and in particular exhibit 140, accurately reflected the payments due, the charges made, the various advances charged, and the payments made." Id. at 580.

On this appeal, the Gilmores challenge a variety of rulings by the district court. We review the district court's legal conclusions de novo and its findings of fact in a bench

trial for clear error. 'See United States v. Copnola, 85 F.3d 1015, 1019 (2d Cir. 1996). Having reviewed the documentary evidence and the district court's findings of fact and law, we conclude that the district court conducted a thorough and accurate analysis of the facts and law at trial and accordingly its decision should be affirmed.

The Gilmores first argue that the district court improperly denied their motion for a continuance of the trial because they had only four days to review a 120-page document when the court should have provided them at least 14'days to review the document before the trial under Rule 26 of the Federal Rules of Civil Procedure. We review the district court's ruling on motions regarding scheduling of trial for abuse of discretion. See Dow Chem. Pac. Ltd. v. Rascator Maritime, S-.A., 782 F.2d 329, 341-42 (2d Cir. 1986). To show abuse, the party must establish both that the denial of the adjournment was arbitrary and that it substantially impaired the presentation of his case. Id.

Here, the district court properly denied the Gilmores' motion for a continuance. It appears that the Gilmores' main argument is that the district court's denial of the motion was an abuse of discretion because it was not reasonable to expect them, proceeding pro se, to examine 120 pages of the Government exhibits to prepare for the trial in only four days. As the court noted, however, even though the court denied the motion, in light of the fact that the Gilmores were proceeding pro se, the court directed the Government to provide the Gilmores with copies of the Government's exhibits prior to trial, and most of the exhibits were not new materials. In addition, while the Gilmores appear to argue that they were prejudiced because the district court did not rule on the motion "until . . .after completion of the trial,' this argument is clearly misplaced. In fact, the district court ruled on the motion at-the very beginning of trial before the formal trial proceedings commenced.

Second, the Gilmores argue that their due process rights were violated because, without providing them an

opportunity to examine the Government's post-trial submission of a "'hypothetical payment schedule" (the revised computation of the amount of debt), the district court directed the Government to submit such evidence and considered it in reaching its decision. An independent review of the record reveals that the district court directed such post-trial submission for the Gilmores' benefit. The district court requested the Government to submit a recalculation of the debt amount post-1989 under the assumption that all prior debts had been cleared. Accordingly, the Gilmores in fact benefitted from that evidence. See Gilmore, 62 F. Supp. 2d at 578-79 (finding that ""the 1989 settlement . . . eliminated any past deficiency"). Moreover, they have not explained why the calculation is incorrect or what the correct result would have been.

The Gilmores also challenge the district court's evidentiary rulings at trial. We review the district court rulings regarding the admission of evidence for abuse of discretion. United States v. SKW Metals & Alloys, Inc., 195

F.3d 83, 87 (2d Cir. 1999). The Gilmores argue that the district court erred because it heavily relied on possibly inaccurate evidence," namely, the Government's exhibit 140 (spreadsheets of breakdown of their account), because even Carrie L. Novak, the government official who prepared the exhibit, testified that the spreadsheets had some mathematical errors and were produced under time pressure. The Gilmores, however, without identifying any inaccuracy of the exhibit, only state that "[i]t is unconscionable that [the district court] would put such weight on an exhibit that is purported to be inaccurate" and that a mathematical error, however slight should be a ground for reversal. In short, the Gilmores do not show that the spreadsheets actually contained any errors or otherwise explain how the district court abused its discretion in admitting the exhibit into evidence. Accordingly, this claim is rejected.

We have considered and reject all other arguments advanced in the Gilmores' briefs for substantially the reasons set forth in the district court opinion.

For the reasons set forth above, the judgment of the district court is **AFFIRMED.** Accordingly, the Gilmores' motion to strike certain portions of the Government's appellate brief is **DENIED** as moot, and the Government's motion to withdraw its cross-appeal is **GRANTED.**

FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: "s/Lucille Carr"

Lucille Carr, Deputy Clerk

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES COURT HOUSE

40 FOLEY SQUARE

NEW YORK 10007

ROSEANN B. MACKECHNIE

CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 6th day of May two thousand two.

Present:

Hon. John M. Walker, Jr.

Chief Judge, (File Stamp[4])

Hon. Chester J. Straub

Hon. Robert A. Katzmann

CIRCUIT JUDGES,

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[4] File Stamp : United States Court of Appeals, Second Circuit, Filed May 6, 2002, Roseann B. Mackechnie, Clerk,

USA

Docket No. 99-6233

v

Gilmore

A petition for panel rehearing having been filed herein by

William C. Gilmore

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED**.

FOR THE COURT:

ROSEANN B. MACKECHNIE, Clerk

By: "s/Arthur Heller"

Arthur M. Heller,

Administrative Attorney